Chem Fab Corporation *and* United Steelworkers of America, AFL-CIO, CLC. Cases 26-CA-8421 and 26-CA-8421-2

August 26, 1981

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND ZIMMERMAN

On March 18, 1981, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Chem Fab Corporation, Hot Springs, Arkansas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The reasons Respondent advanced for discharging Stephens and Stewart were plainly pretextual, and Member Jenkins would not rely on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), to sustain the violations in these instances.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT promulgate, maintain, or enforce no-solicitation and no-talking rules in order to discourage our employees from engaging in union activities.

WE WILL NOT threaten our employees with loss of benefits or that we will bargain from scratch or a minimum proposal if we are required to bargain with the United Steelworkers of America, AFL-CIO, CLC.

WE WILL NOT solicit employees to report employees who are active on behalf of the Union.

WE WILL NOT create an impression of surveillance by telling our employees that we found out everyone who signed a union authorization card the last time.

WE WILL NOT discharge or otherwise discriminate against our employees with regard to hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of the United Steelworkers of America, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT request our employees to report harassment by prounion employees for the purpose of ascertaining the identity of union supporters or card solicitors.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist the United Steelworkers of America, AFL-CIO, CLC, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL make whole John Stephens and John Clark Stewart, with interest, for any loss of wages or other benefits suffered as a result of our discrimination against them and we will reinstate them without prejudice to their seniority or other rights.

WE WILL expunge from the personnel files of employees Chris Harvey, Pete Paisley, and James Smith all references to disciplinary action which resulted from their failure to comply with our no-talking rule.

CHEM FAB CORPORATION

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This matter was heard at Hot Springs, Arkansas, on Decem-

ber 4, 5, and 9, 1980. The charges were filed by United Steelworkers of America, AFL-CIO, CLC, hereinafter the Union or Charging Party, in Case 26-CA-8421 on May 5, 1980, and in Case 26-CA-8421-2 on May 19, 1980 (Case 26-CA-8421-2 was amended on June 4, 1980). The Regional Director for Region 26 of the National Labor Relations Board, hereinafter the Board, issued an order consolidating cases, consolidating the complaint, and a notice of hearing on June 11, 1980. The consolidated complaint alleged that Chem Fab Corporation, hereinafter Respondent or Employer, violated Section 8(a)(1) of the National Labor Relations Act, hereinafter the Act, through various acts of interference, restraint, and coercion of its employees by its supervisors and agents; and further violated Section 8(a)(3) and (1) of the Act by transferring and thereafter discharging its employee John Stephens; by issuing warnings to its employees Chris Harvey, Pete Paisley, and James Smith for talking about the Union; by discharging its employee John Clark Stewart; and by refusing to rehire Ken Jones as an employee.

Respondent filed a timely answer to the consolidated complaint denying it had engaged in or was engaging in the unfair labor practices alleged.

Each party was afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, to file briefs, and to submit proposed findings of fact and conclusions of law.

Upon the entire record in this proceeding, including my opportunity to observe directly the witnesses while testifying and their demeanor, and upon consideration of briefs filed by counsel for General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation licensed to do business in the State of Arkansas with offices, plants, and places of business located in Hot Springs, Arkansas, where it is engaged in the manufacture, sale, and distribution of helicopter and airplane parts. Annually, Respondent in the course and conduct of its business operations shipped from its Hot Springs, Arkansas, facilities products, goods, and materials valued in excess of $50,000 directly to points outside the State of Arkansas. Annually, Respondent in the course and conduct of its business operations purchased and received at its Hot Springs, Arkansas, facilities products, goods, and materials valued in excess of $50,000 directly from points outside the State of Arkansas.

The complaint alleges and Respondent admits the above set forth jurisdictional facts. Although Respondent denies the legal conclusion that it is engaged in commerce within the meaning of the Act, I nevertheless find, based upon its admitted business operations, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The consolidated complaint alleged but Respondent denied that the Union is or was a labor organization within the meaning of Section 2(5) of the Act.

The uncontradicted testimony of Dewey D. Stiles, subdistrict director of the Union for the State of Arkansas, was that the Union exists for the purpose of representing employees in industrial plants with respect to wages, hours, and other terms and conditions of employment of its members. Stiles testified the Union has over 1 million dues-paying members, and has numerous collective-bargaining agreements with employers covering wages, hours, and other working conditions of the employees. The international officers and district directors of the Union are elected by popular vote of the Union's members throughout the United States and Canada.

I find, based on the uncontradicted and credited testimony of Stiles, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent utilizes two plant locations in Hot Springs, Arkansas. One of the plants is located on Central Street and the other is located approximately three city blocks or 1/2 mile away on Nevada Street. Respondent operates two shifts at both of its facilities where in the course of its business of manufacturing and distributing aircraft parts it operates two chemical milling apparatuses. A campaign by the Union to organize the employees of Respondent commenced on or about March 16, 1980. Respondent's president, Ronald Reagan, gave five speeches which were made to each shift at both of the locations of Respondent on April 2, 9, 17, and 24, and May 1, 1980. Some of the alleged 8(a)(1) allegations are attributed to the speeches given by President Reagan.

The General Counsel in its consolidated complaint alleged that Respondent violated Section 8(a)(1) of the Act in numerous respects during a period extending from on or about March 21 to April 24, 1980. Unlawful conduct is attributed to Respondent President Ronald Reagan, Nevada Street Plant Manager Phillip Sorrell, and Leadman Wade Ross. Respondent in its answer admitted the supervisory status of Reagan and Sorrell, however, it denied the supervisory status of Wade Ross. Inasmuch as unlawful conduct is attributed to Wade Ross, I shall first treat the issue of whether Ross was a supervisor and agent of Respondent within the meaning of Section 2(11) and (13) of the Act.

B. *The Alleged Supervisory Status of Wade Ross*

Ross testified he was a second-shift leadman at Respondent's Nevada Street plant and that he worked under the immediate supervision of Nevada Street Plant Manager Sorrell. According to Ross, Sorrell worked the day shift rather than the night shift; however, there were occasions when Sorrell would be present at the beginning of the second shift. Ross stated he spent approximately 75 percent of his time doing production-type jobs. Ross testified he worked either in the flo coating depart-

ment, spray masking department, scribing department, reworking department, or chemical milling department depending upon where he was needed on the particular shift. According to Ross, there were 17 employees on the second shift and 4 other leadpersons on the shift in addition to himself. Ross stated he was the "lead" leadperson.

Any problems which would arise during the second shift in the various departments, the leadpersons in charge of those departments brought their problems to Ross and if he could not resolve the particular problem, he then contacted Nevada Street Plant Manager Sorrell. Ross was the ranking individual present on the second shift.

Ross passed out to the employees their payroll checks and if an employee forgot to clock in or out, Ross would initial the timecard of the employee with the correct amount of time worked. Ross testified he had on numerous occasions transferred employees from one department and assigned them to jobs in other departments on the second shift. Ross testified he recommended employee John Clark Stewart for a merit increase and Stewart was granted the raise.

Ross testified an employee on the second shift named Richard Gross would leave Respondent's premises at lunch time without clocking out as he was required. Gross would leave, according to Ross, without clocking out or without advising either Ross or his immediate leadman that he was leaving. Ross stated on one particular occasion Gross left at lunch and did not return and that the following day he apprised Nevada Street Plant Manager Sorrell of Gross' leaving Respondent's premises and not returning. Ross told Sorrell it was not the first time—that it happened on other occasions. Ross stated that when he apprised Sorrell of the conduct of Gross, Sorrell informed him to terminate Gross. Later that same day in March 1980, Nevada Street Plant Manager Sorrell terminated Gross. Ross stated he was with Sorrell at the time he terminated Gross.

Ross further testified there was on the second shift an employee, Carl Langston, who "would sneak around and when no one was looking, he'd go into the lunchroom and get other employee's lunches and eat them." Ross testified he personally caught Langston eating other employees' lunches and that Langston would also use profanity in front of women. Ross reported Langston's conduct to Nevada Street Plant Manager Sorrell and Sorrell told Ross if he caught Langston stealing lunches again to terminate him. A few days later, Ross again caught Langston eating someone else's lunch and immediately terminated Langston telling him this was the second time he had caught him stealing lunches and that he had repeatedly had to talk to him about his conduct toward women. According to Ross, Sorrell was not present when he terminated Langston nor did he contact Sorrell at the point at which he decided to terminate him.

Ross testified that Respondent's employees are evaluated for pay raise and performance purposes every 6 months. Ross stated he participated in the evaluation of the second-shift employees if he were present. Ross testified that Nevada Street Plant Manager Sorrell would come to him approximately 2 or 3 days before an employee's interview was to be conducted and inquire of him how the employee was doing on the job, if the employee was keeping busy, had the employee spent his time well, and was the employee capable of following orders. Ross testified that essentially what Sorrell was asking was whether the employee had done a good job for him. Ross testified it was his belief Sorrell took Ross' comments at face value.

Ross testified that the amount of time he would spend on any particular job on any given night would vary. Ross stated 25 percent of his time was spent in going from department to department helping to straighten out problems. Ross punched a timeclock and was hourly paid. Ross testified that Nevada Street Plant Manager Sorrell would advise him in the afternoon before Sorrell departed what constituted the workload for that evening and whether there was any necessity for moving employees from one department to another. Nevada Street Plant Manager Sorrell testified Ross only had authority to grant time off in emergency situations.

Respondent contends Ross is not a supervisor within the meaning of the Act in that Ross had no authority to hire and fire employees, that he played no significant role in the granting of wage increases and that he was nothing more than a coordinator without additional authority among the leadpersons on the second shift. Respondent further contended any discharges brought about by Ross were authorized or directed by Nevada Street Plant Manager Sorrell.

I am persuaded by the record evidence that Ross at all times material herein was supervisor within the meaning of Section 2(11) of the Act. Ross possessed and exercised authority with respect to job assignments and the transferring of employees from one department to the other. Ross' responsibility to direct work was more than that of a production expediter or technical assistant. The record evidence demonstrates Ross had the authority to effectively recommend the discharge of employees and to effectively recommend granting wage increases for employees. Though possibly somewhat limited, Ross had the authority to correct timeclock cards of employees. Additionally, in the absence of Nevada Street Plant Manager Sorrell (who was present at most approximately 2 hours during the second work shift), Ross was in charge of the second shift at Respondent's Nevada Street plant. The record evidence demonstrates that Ross in the performance of his functions for Respondent exercised independent judgment indicative of a supervisor within the meaning of the Act. I am persuaded Ross was a supervisor within the meaning of the Act. See: *Agricom Oilseeds, Inc.*, 245 NLRB 616 (1979).[1]

[1] I reject Respondent's argument that Ross' job duties were similar to those of the crew leaders in *Rexair, Inc.*, 243 NLRB 876 (1979). The crew leaders in *Rexair* unlike the instant case performed almost exclusively manual labor and only assisted other employees in a routine manner without the exercise of any meaningful independent judgment. Further, the crew leaders' acts of assistance in *Rexair* were isolated and sporadic. A similar case upon which Respondent would rely, *Kendrick Engineering, Inc.*, 244 NLRB 989 (1979), is also distinguishable. The leadpersons therein were found not to be supervisors inasmuch as they made only a limited check of employees' work three times a day and rendered technical knowledge to other employees as opposed to directing the

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Treatment of the 8(a)(1) allegations will be substantially in the order the allegations appeared in the consolidated complaint. The specific complaint allegations are summarized and discussed below.

C. *The Alleged 8(a)(1) Violations*

1. The "no-fraternization" rule

The consolidated complaint alleged at paragraphs 7(a)(i) and (ii) that on or about March 21, 1980, Respondent verbally promulgated, maintained, and selectively and disparately applied the following rule against employees who joined, supported, or assisted the Union:

> Employees from the Nevada Street location and the Central Street location are not allowed to fraternize with each other during breaks, lunch hour, or between night shift and day shift at the respective locations. Non-employees are not allowed to eat lunch in the break room with employees.

Counsel for the General Counsel relies upon admissions of Respondent President Reagan and upon the testimony of employees John Stephens and John Clark Stewart to establish the violation alleged.

Employee John Stephens testified he contacted Subdistrict Director Stiles of the Union in March 1980 in an effort to commence a union campaign at Respondent's Hot Springs, Arkansas, locations. On March 17, Stephens began getting employees to sign union cards. Stephens, over the next 5 days, obtained approximately 40 signed authorization cards for the Union at Respondent's Central Street location. Stephens testified he attempted at night between April 16 and 21, 1980, to solicit employees at the Nevada Street plant during that plant location's lunch hour break. Stephens attempted to obtain the signatures at the Nevada Street plant after he had completed his day's work at the Central Street location.

On Friday, March 21, 1980, Stephens, after he had clocked out at the Central Street plant, went to the Nevada Street plant during his lunch hour and proceeded to enter the Nevada Street plant by the back door. Stephens stated he was met by Respondent President Reagan who inquired of him what he was doing there. Stephens told Respondent President Reagan he was soliciting cards for the Union. According to Stephens, President Reagan told him he had no business at the Nevada Street plant and that there was no communications between the Nevada and Central Street plants. Stephens was asked by President Reagan to leave the premises. He immediately left.

Stephens testified that prior to the above-described conversation with President Reagan on March 21, 1980, he had never been asked to leave the Nevada Street plant although he had been to the plant on numerous occasions previous thereto, for among other purposes, to have lunch with his wife. Stephens testified he had for a 2-year period up until his wife ceased working for Respondent in November 1979 had lunch with her at the Nevada Street plant. Stephens testified he had talked to Respondent's President Reagan, Vice President Furnas, Nevada Street Plant Manager Sorrell, and Supervisor Ross on occasion when he had been at the Nevada Street location. Stephens testified he had never been told not to visit the Nevada Street plant nor did he know of any rule which would prohibit fraternizing between the two plants.

Respondent President Reagan stated he was at the Nevada Street plant on March 21, 1980, at lunch time, when he observed employee John Stephens entering the plant. Reagan testified Stephens worked at the Central Street plant which was approximately a half a mile from the Nevada Street plant. President Reagan testified that upon seeing Stephens entering the plant he asked him what he was doing there. According to President Reagan, Stephens stated "it was his lunch time and he had come down to circulate union literature and get cards signed." Reagan stated he told Stephens no, he was not going to do that, and asked him to leave the Nevada Street plant.

Reagan testified the rule had never been announced to employees prior to his announcing it to Stephens on the date in question. Reagan testified that it was a matter of general policy that prohibited wives and friends from having interchange between the plants and between the day and night shifts. President Reagan stated that all of the rules which Respondent felt were sufficient enought to write down were contained in Respondent's written rules (G.C. Exh. 3). President Reagan further stated Respondent could not write down every general policy rule which Respondent had. However, Reagan acknowledged that Respondent's rules did not contain a rule with respect to a prohibition on employees fraternizing between the two plants on their breaks; neither did Respondent's rule book contain any no-solicitation or no-distribution rules at all.

Employee John Clark Stewart testified he knew of no rule that prohibited solicitation at Respondent's plants nor did he know of any rule which would preclude nonemployees from entering the break area of Respondent. In fact, employee Stewart testified he had seen employee Scotty Willis' two daughters in the break area at Respondent's plant frequently to eat lunch with their mother. Further, Stewart stated he had seen leadperson Ross talking to women at the table in the break area at the time.

I credit the testimony of employees Stephens and Stewart with respect to their testimony that they knew of no rule which would prohibit fraternizing between the plants or soliciting during break time. I do so primarily on the fact Respondent acknowledged it had no written or announced rule prior to March 21, 1980. I also credit the testimony of Stephens that he had visited the Nevada Street plant on numerous occasions to have lunch with his wife who was employed there. Stephens' testimony is supported by the fact that Respondent's witnesses acknowledged that if an employee was going to leave one plant for lunch, the only requirement was that the employee punch out at the timeclock. Further, there was no

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work of other employees. In the *Kendrick* case even the technical assistance rendered by the leadpersons constituted only 5 to 15 minutes of the leadpersons' time three times per day and unlike the instant case did not require any independent judgment on the part of the leadpersons therein.

published or announced rule against visiting between one plant and the other. I likewise credit the unrefuted testimony of employee Stewart that he had seen the children of employee Scotty Willis come into the plant and have lunch with their mother.

It is quite clear that prior to March 21, 1980, Respondent had no rule regarding solicitation. I am persuaded and find that Respondent promulgated its no-solicitation rule at the very inception of the union activity as a part of its response to the union organizational activities of its employees. Accordingly, I find that such conduct was violative of Section 8(a)(1) of the Act. See *Montgomery Ward & Co., Incorporated*, 227 NLRB 1170, 1174 (1977), and *Pedro's Inc., d/b/a Pedro's Restaurant*, 246 NLRB 567 (1979).

The General Counsel in its consolidated complaint does not plead that the rule announced on March 21, 1980, is unlawful in and of itself. Counsel for the General Counsel does, however, allege that Respondent maintained and enforced the rule in a selective and disparate manner applying it only against employees who joined, supported, or assisted the Union.

President Reagan testified Respondent allowed solicitation in its plants with respect to raising money for flowers in the event of sickness or death, where an employee was in the hospital, or for soliciting blood donors. Also, it was established that family members of employee Scotty Willis visited the plant and ate with her during her lunchtime. For that matter, employee Stephens testified, and I credit his testimony in this respect, that he ate lunch on numerous occasions with his wife at the Nevada Street plant although he, Stephens, was employed at the Central Street plant at the time. As set forth above, Respondent did not permit Stephens to solicit on his nonworking time at the Nevada Street plant other employees on their nonworking time. I conclude and find Respondent's disparate enforcement of its no-solicitation rule violates Section 8(a)(1) of the Act.

2. The alleged rule against talking about the Union

The General Counsel alleged in paragraph 7 of the consolidated complaint that on or about April 9, 1980, Respondent in a speech to its employees promulgated, maintained, and selectively and disparately applied the following rule against employees who joined, supported, or assisted the Union:

> Employees are not to talk to other employees about the Union on working time.

Respondent President Reagan testified that on April 9, 1980, while giving a speech to employees, he informed them "that the employees are not to talk to other employees about the Union on working time." Reagan testified this was the first time he had announced the rule to Respondent's employees. Reagan stated he formulated the rule during the preparation of the speech that he delivered on April 9, 1980. Reagan testified he formulated the rule to keep employees from wandering around the plant and spending time in areas or departments where they did not work. Reagan stated the rule had a dual purpose—that is, to stop employees from wandering around the plant and from talking. Reagan stated it was quite obvious employee production was down.

Reagan acknowledged the rule he announced was not designed to stop employees from talking who were doing so in the same area where they were working. According to President Reagan, the rule's primary purpose was simply to keep employees from wandering away from their work station to other areas of the plant.

Respondent President Reagan testified that at the time he made the announcement with respect to the rule prohibiting employees from talking about the Union he had received reports from supervisors of Respondent that Pete Paisley, Chris Harvey, John Stephens, and Pete Smith were wandering around during work out of their area—obviously out of their area and obviously talking about the Union. Respondent President Reagan stated he was certain that the employees were obviously away from their work station and obviously talking about the Union, however, he did not personally observe the employees. Reagan also testified that to his knowledge no one had specifically overheard the employees talking about the Union. President Reagan was certain he had received reports of the employees wandering away from their work station and talking about the Union prior to his having announced the rule on April 9, 1980. President Reagan further stated that at the same time he received the reports that the employees in question were wandering away from their work area and talking about the Union, he issued warnings to them.

I have concluded and find that Respondent's announced rule against employees talking to other employees about the Union on working time violated Section 8(a)(1) of the Act. The testimony of Respondent President Reagan tends to indicate that the purpose of the announced rule was simply to prevent and discourage employees from discussing the Union in their work areas. Reagan's contention the rule was announced to keep employees from wandering about the plant and being away from their work area is not very convincing in that the rule did not preclude employees from moving around the plant, but rather prohibited them from talking about the Union. Further, Reagan's testimony that he did not mean by the announced rule to preclude employees who worked next to each other from talking to fellow employees leaves only one inference to be drawn; namely, that he did not want employees who worked next to each other talking about the Union notwithstanding the fact he did not mind them talking about other things. Finally, Reagan's assertion that he had to announce the rule on April 9, 1980, to preclude employees from wandering around the plant does not coincide with the greater weight of the evidence. Reagan stated he immediately issued three warnings to employees Paisley, Harvey, and Smith when he first learned of any wandering about the plant and talking about the Union. However, the warnings to the three employees were not issued until April 18, 1980, approximately 9 days after Reagan had announced the rule that he contends was brought about by these employees wandering around the plant. The facts of the instant case are clearly distinguishable from cases upon which Respondent would rely to justify its actions.

Respondent cites *Larsen Supply Co., Inc.*, 251 NLRB 1642 (1980), a case wherein an Administrative Law Judge found that an outburst by a management representative did not constitute promulgation of an improper no-solicitation rule, but rather was an innocuous reference to the union in what was essentially a restoring of order and efficiency to a muddled workplace. In *Larsen* the manager rather sharply indicated to an assembled group of employees that he wanted them to carry out their work and he did not want to hear about the union (or, as some witnesses attributed to him, he did not care about the union). In the instant case a carefully thought through rule was promulgated allegedly in response to three individuals wandering away from their job locations in a situation where the evidence indicates the employees were not allegedly discovered or warned until approximately 9 days after the rule was announced. Further, the stated purpose of the rule was to keep employees from wandering around the plant; however, it made no mention of wandering around the plant, but rather simply addressed itself to talking about the Union. And, further, it was not meant to preclude employees from talking with each other, just merely to preclude them from talking about the Union. It is clear that talking was not an offense which disturbed Respondent President Reagan, but rather talking about the Union did disturb him. See *Ling Products Company, Inc.*, 212 NLRB 152 (1974). It is also quite clear that Respondent issued warnings only to those employees allegedly talking about the Union and not to other employees who were talking in general.[2]

3. The alleged unlawful conduct attributed to and based on Reagan's speeches

The General Counsel at paragraph 7(c) of the consolidated complaint alleged that on or about April 2 or 9, 1980, at both the Central and Nevada Street locations, Respondent in a speech to its employees created the impression of surveillance by telling its employees that employees had been called to testify regarding their union authorization cards in the previous case, and solicited its employees to request their union authorization cards back.

Counsel for the General Counsel relies on speeches given by Respondent President Reagan to establish these violations. It is undisputed that President Reagan gave speeches to Respondent's employees at both its Central and Nevada Street plants on April 2, 9, 17, and 24 and May 1, 1980. The allegation involving Nevada Street Plant Manager Sorrell alleged to have taken place on April 9, 1980, will be covered *infra*. Counsel for the General Counsel also presented employee Brock Williams who testified with respect to employee meetings he attended at which Reagan spoke.

Employee Williams testified Respondent President Reagan indicated in the speech he was present at that he would use every legal means at his disposal to see that the Union did not get in at Respondent's plant. And, after some prodding by counsel for the General Counsel, Williams testified employees asked Respondent President Reagan whether Respondent would be able to see the union cards of employees. According to Williams, Reagan responded he would use every legal means at his disposal to defeat the Union. Employee Williams, after having a chance to refresh his recollection from a pretrial affidavit given to the Board, indicated Reagan told the employees he did have the legal right to look at the cards—that he had the legal right to find out who signed cards. Employee Williams on cross-examination acknowledged Respondent President Reagan may have said, "The last time it went to court, we did find out who signed some of the cards."

Respondent President Reagan denied saying in any speech that he gave that employees who signed cards last time had been called to testify in a previous hearing regarding those union cards. Reagan acknowledged he did tell employees in one of his speeches they could request their union cards back.

The text of the speech given by Respondent President Reagan to employees on April 2, 1980, indicates President Reagan stated:

> Many of you have come to me and told me you don't want a union and I am sure, as was the case last time, that a lot of you may have signed cards just to get the union pushers off your backs. But, you should know that even if you signed a card you are in no way obligated to the Union and you can even get the cards back just by asking for them.

Respondent President Reagan in his April 9, 1980, speech stated in part:

> All of you who were here the last election remember the strife and dissention that was created, the hard feelings that were created between fellow employees and the time and trouble involved in the lengthy court trial with many of you being called to testify.

The testimony of Williams and the portions of Respondent President Reagan's speeches set forth *supra* constituted counsel for the General Counsel's evidence with respect to complaint allegations 7(c)(i) and (ii). I have concluded the testimony of employee Williams was unbelievable. Williams was simply too uncertain as to what he may have heard with respect to these allegations of the complaint. Although violations of the nature alleged in this complaint paragraph were substantiated with respect to other supervisory personnel of Respondent, I am persuaded and find that the General Counsel

[2] I conclude and find the warnings issued on or about April 18, 1980, to employees Chris Harvey, Pete Paisley, and James Smith pursuant to Respondent's announced prohibition against employees talking to fellow employees about the Union on working time as alleged in par. 10(b) of the consolidated complaint violated Sec. 8(a)(3) and (1) of the Act. It is clear the rule was disparately enforced against the individuals in question, inasmuch as Respondent President Reagan testified he did not mean to preclude employees from talking to each other in their work area. The rule was allegedly announced to preclude employees from wandering about the plant. However, the warning notices, G.C. Exhs. 15(a), (b), and (c), indicate they were issued to the employees in question because they were talking about the Union during working time. (Harvey's warning, G.C. Exh. 15(a), also indicates it was for distribution of literature.)

did not meet its burden of proof with respect to paragraphs 7(c)(i) and (ii) of the complaint and as such I recommend that portion of the complaint be dismissed in its entirety.

The General Counsel at paragraph 7(b) of the consolidated complaint alleged that Respondent acting through President Reagan at its Central and Nevada Street locations on or about April 24, 1980, in a speech to its employees: (1) threatened its employees with loss of benefits by telling its employees Respondent would start from scratch a minimum proposal if they have to go to the bargaining table; (2) solicited employees to report employees who were active on behalf of the Union; and (3) threatened employees with the loss of their jobs if they were for the Union.

Employee Kenneth Jones testified that Respondent President Reagan in a speech to employees stated he did not have to pay over minimum wage and that should a union get a contract at Respondent he would start from scratch. Jones stated the speech given by Reagan was in either late March or early April 1980. Employee John Clark Stewart testified that Respondent President Reagan stated at a meeting on April 24, 1980, that "if the Union was voted in, all he had to pay was minimum wage; and if the Union was voted in, he was going to start from scratch."

President Reagan acknowledged telling employees bargaining would start from scratch. In his April 24, 1980, speech to employees President Reagan stated:

> And I'm telling you now that if we do have to go to the bargaining table with the Union, we are going to start from scratch a minimum proposal. We, of course, cannot know what the outcome of any such bargaining would be, but there is no law that says once a benefit is given, it can't be taken back. Only legally required minimum wages, social security, and overtime in excess of 40 hours must be provided.

Elsewhere in President Reagan's speech he stated:

> If they won, our only obligation would be to bargain with the Union in good faith, which we would do, but we would in no way be obligated to give pay raises, start a retirement plan or anything else. Those things could come only if the Company was willing to give them. And I'm telling you right now that this Company will never give in to any demands we consider unreasonable or not in our best interests.

Employee Kenneth Jones testified Respondent President Reagan said in the same speech referred to *supra* that if there was any union pushers harassing anyone, to come and tell him, that he would take care of it.

The written text of Respondent President Reagan's April 24, 1980, speech (G.C. Exh. 10) contains the following:

> The Company has received several reports from employees that they are being harassed about the Union by some of the pro-union people. The Company absolutely will not tolerate this type of conduct and will deal with any such offenders most severely. If you feel you are being harassed, simply report it to your supervisor and we will take it from there.

Employee Kenneth Jones further testified that Reagan stated in the speech that he attended:

> [I]f we did not like Chem Fab or wasn't satisfied with Chem Fab and wanted a union shop, or whatever, to get the hell out.

Employee Stewart testified Respondent President Reagan said in the speech that he attended: "If any of you want to work in a union shop, you can quit and get the hell out right now." Stewart testified Reagan continued by saying "the last time a union had tried to come in, he was forced to lay people off through a work slowdown—because of a work slowdown. But he also added that Chem Fab does not lay people off." Employee John Stephens testified he was present at a meeting in which Respondent President Reagan and Respondent Vice President Furnas were present. Stephens placed the meeting as somewhere between April 3 and 23, 1980. Stephens testified Reagan had talked about the pros and cons of a union in his speech. Stephens testified he was giving feedback to Reagan in an attempt to break up the flow of Reagan's speech, and that Reagan told him if he wanted to work at a union plant, why did he not quit and go to work at a union plant. Stephens responded to Reagan's comment by stating, "I know you'd really like me to do that."

Respondent President Reagan remembered stating in one of his speeches, "If anyone is not happy here and wants a job with a union shop and a good pension, quit and get the hell out of here and go get it." Reagan testified he made the comment in response to a question asked him by employee Kenneth Jones as to why the employees of Respondent could not have a pension plan like the one at Reynolds Aluminum.[3]

Counsel for the General Counsel contends further evidence of threats of loss of existing benefits are contained in the following excerpts: From the April 24, 1980, speech (G.C. Exh. 10) given by Respondent President Reagan:

> Don't be tricked into just giving the Union a chance to see what they can do. You could wind up walking a picket line with no jobs, and I will guarantee you this: the Union won't pay your bills and under Arkansas law, you won't even be able to draw unemployment. Do you think it's worth the risk? You do know what you have now and you can count on it. But if the Union is voted in, the whole picture will change and nobody knows what we might end up with.

[3] I credit the testimony of employees Stewart, Jones, and Stephens with respect to the allegations of par. 7(d) of the consolidated complaint inasmuch as the evidence indicates it is very probable that Reagan said what each of the employees attributes to him.

From the April 9, 1980, speech (G.C. Exh. 8):

> But all of this could be seriously jeopardized if the Union gets in and we have to deal with them. Because if that happens, we intend to play real hard ball and I don't know where we will wind up. But I do know we would adopt a very tough bargaining stance and we won't give in to any union demands that we think are unreasonable or not in our best interests.

From the May 1, 1980, speech:

> The Union has said that there is a federal law that forbids the Company from taking away any of your benefits just because you voted in a union. This is true. But again, the Union just told you a part of the facts. The other part is this. You could lose your benefits as a result of lawful collective bargaining.

The General Counsel contends Reagan's speeches inferred a loss of existing benefits and as such violated Section 8(a)(1) of the Act.

Respondent contends such statements must be considered in the context in which they are made to determine whether they are coercive. Respondent attempts to find support for its actions in the instant case in such cases as *Wagner Industrial Products Company, Inc.*, 170 NLRB 1413 (1968). The Board in *Wagner* found no violation of the Act where an employer in a letter to its employees stated that those voting in a union election sometimes mistakenly assumed a union victory meant higher wages and benefits. The letter in *Wagner* went on to point out that nothing could ever be further from the truth and that an employer was not required even to continue in effect its existing benefits if a union won and that bargaining started from scratch. Respondent contends such reasoning should be applied to the instant case inasmuch as Respondent was only indicating it would start from a minimum proposal and that give and take in bargaining would determine what the employees wound up with.

The Board has long held that comments such as "bargaining from scratch" must be viewed in the entire context in which they are made in an effort to make a determination whether such comments would be coercive and in violation of Section 8(a)(1) of the Act. I am persuaded and find that the comments herein were coercive and in violation of Section 8(a)(1) of the Act inasmuch as the entire tenor of the speeches made by Reagan and others of Respondent created a clear indication of a threat to withdraw benefits presently existing from the employees if the Union were successful in its effort to represent them. I base my conclusion on, among other things, the other comments of President Reagan which I find to be violative of the Act; for example, his implied threat of discharge as will be discussed *infra*. In the instant case I find Respondent exceeded the point of merely informing its employees that in give and take they could lose benefits, but rather implied to the employees that bringing in the Union would result in a loss of existing benefits. Respondent went beyond merely explaining the collective-bargaining process to its employees and created a threat of a loss of existing benefits if they chose the Union. See *Taylor-Dunn Manufacturing Company*, 252 NLRB 799 (1980). The mere fact that Respondent made expressions of an intention to abide by the law or bargain in good faith did not insulate its union campaign speeches from further scrutiny. See *Taylor-Dunn Manufacturing Company*, 231 NLRB 539 (1977). The further scrutiny herein clearly demonstrated coercive conduct on the part of Respondent in violation of Section 8(a)(1) of the Act.

Respondent contends that President Reagan's remarks to employees on April 24, 1980, wherein he stated, "if you feel you are being harassed, simply report it to your supervisor and we will take it from there," were prompted and justified by what it contends were three instances of harassment. The instances of harassment will be discussed elsewhere in this Decision. It is not entirely clear on this record when Respondent President Reagan received the alleged comments of harassment by employees. Notwithstanding how Respondent may have interpreted the reports of harassment, its broadly worded comments to its employees had the potential of effecting the employees in at least two ways; namely, encouraging employees to report to Respondent the identity of union card solicitors who in any way approached employees in a manner subjectively offensive to the solicited employees and of correspondingly discouraging card solicitors in their protected organizational activities. See: *J. H. Block and Co., Inc.*, 247 NLRB 262 (1980). As was noted in *Block*, the Board has consistently found such broadly worded instructions to employees to be unlawful. *J. P. Stevens & Co. Inc.*, 245 NLRB 198 (1979); *L'Eggs Products Incorporated*, 236 NLRB 354 (1978); *Sunnyland Packing Company*, 227 NLRB 590, 594–595 (1976); *Lutheran Hospital of Milwaukee, Incorporated*, 224 NLRB 176, 178 (1976); *Poloron Products of Mississippi, Inc.*, 217 NLRB 704, 707 (1975); and *Bank of St. Louis*, 191 NLRB 669, 673 (1971). Therefore, under the circumstances of the instant case, I conclude the instructions herein were similarly unlawful, and find that Respondent violated Section 8(a)(1) of the Act by instructing its employees to report to it instances wherein employees felt they were being harassed by the Union.

Respondent President Reagan's statement to employees, particularly employees Jones, Stewart, and Stephens, to the effect that if they were not happy and wanted a job with a union shop to quit and get the hell out of there constituted an implied threat of discharge or loss of job. Little else can be inferred from such a suggestion. See: *Bell Burglar Alarms, Inc.*, 245 NLRB 990 (1979), and *726 Seventeeth, Inc., t/a Sans Souci Restaurant*, 235 NLRB 604 (1978).

4. Alleged unlawful conduct attributed to and contained in Sorrell's speech

The General Counsel at paragraphs 8(a) and (b) of its complaint alleged that Respondent on or about April 9, 1980, through Nevada Street Plant Manager Sorrell created the impression of surveillance by telling its employees Respondent had found out everyone who had signed union authorization cards and voted in the previous elec-

tion and, further that Respondent solicited its employees to get their union authorization cards back.

Employee Kenneth Jones testified that he attended a meeting wherein Nevada Street Plant Manager Sorrell spoke to employees and stated, among other things, "a comment about Mr. Reagan knowing who signed cards last time and that if anyone had changed their mind and wanted to get their cards back to come to them or go up to the other plant and they could get their cards back." Jones stated he was working at the Nevada Street plant at the time Sorrell made the speech. Jones placed the date of the speech in either late March or early April 1980.

Employee John Clark Stewart also testified he attended a meeting at the end of March or beginning of April 1980 at which Nevada Street Plant Manager Sorrell spoke. Stewart recalled that Sorrell stated, "the last time there had been a union election, Mr. Reagan found out everyone who had signed cards in favor of the Union."

Nevada Street Plant Manager Sorrell testified he gave a speech to employees on the second shift on April 9, 1980. With respect to the speech Sorrell testified, "there had been a couple of employees that had asked me specifically if they could get their cards back if they wanted them back, and they asked me if it was true what they had heard that Mr. McDonald and Mr. Reagan had seen some cards in the previous union election, and I merely answered those two questions." Sorrell further testified he told the employees that Reagan and McDonald had seen some cards of the last union election and, if they wanted their cards back, they could get them back from whomever they had obtained the cards. Sorrell indicated he answered the questions about who had seen the cards last time extemporaneously.

Although the testimony of Jones, Stewart, and Sorrell is essentially the same, Jones and Stewart impressed me as being more trustworthy and truthful and as such I am persuaded their versions of the events of April 9, 1980, are probably more accurate.

Taken in the context of this case, I am persuaded the comments found to have been made by Nevada Street Plant Manager Sorrell exceeded truthfully advising employees as to their rights and clearly constituted a request of its employees to obtain their union authorization cards back from the Union.

Additionally, I am persuaded and find that the statements of Respondent that it had found out who signed union cards last time was clearly coercive and in violation of Section 8(a)(1) of the Act. Although these facts do not fit neatly into an impression of surveillance allegation, I think it is reasonable that employees could assume from the statement that their actions were under surveillance although the surveillance was not done in a surreptitious manner. I find Respondent violated Section 8(a)(1) of the Act as alleged in paragraphs 8(a) and (b) of the consolidated complaint. See *Hankamer Ready Mix Concrete Company*, 234 NLRB 608 (1978).

5. Alleged unlawful conduct attributed to Leaderperson Wade Ross

The General Counsel alleged at paragraphs 9(a), (b), and (c) of the consolidated complaint that Respondent, acting through Leaderperson Ross at its Nevada Street location on April 8, 1980, created an impression of surveillance by telling employees Respondent found out everyone who signed a union authorization card the last time; on April 15, 1980, threatened employees with loss of job or layoff by asking its employees what they were going to do with all the time on their hands and telling them to remember what happened to all those people last time; and on April 10, 1980, coerced, harassed, and intimidated its employees because of their union desires.

Employee Kenneth Jones testified he was the Chem Mill operator at the Nevada Street plant for approximately 2-1/2 years until April 24, 1980. Jones testified he was assisted in the operation of the mill by employee John Clark Stewart. Both Jones and Stewart were supervised by Wade Ross. Jones testified he told Ross he was for the Union. According to Jones, Ross told him he had made a wrong choice. Jones told Ross he felt everyone should have a right to choose whether they wanted to belong to a union and to speak their own opinion. According to Jones, Ross told him, "Well, you know what happened to you last time, the last time you were involved in a union activity." Jones also testified that Ross would ask him and Stewart what they were going to do with their time off. Jones testified the last time there had been union activity employees had been laid off.

Employee John Clark Stewart testified he was approached while on lunch break by fellow employee John Stephens at the Nevada Street plant on March 20, 1980, about signing a union card. Stewart signed a union card the next day. In early April 1980 Stewart began wearing a sweatshirt with "AFL-CIO" on it. On those occasions when he did not wear the sweatshirt with "AFL-CIO" on it, he wore a union button. Stewart testified that from April 10, 1980, until he was terminated he either wore the sweatshirt or the union button each day. Stewart testified that the first time he wore the sweatshirt with "AFL-CIO" on it, Ross asked him if he thought it was smart wearing the shirt. Stewart stated he told Ross that he did not know if it was smart, but he felt it was right. Ross then told Stewart, "Don't you think the smart thing to do would be to take—to pull the mother f—— inside out?"

Stewart testified that Ross spoke with employee Jones and himself either at the end of March or beginning of April 1980 by asking if they knew that Respondent President Reagan found out everyone who signed cards for the Union during the last election.

Ross stated that he never actually discussed the Union with Stewart, but that maybe there were tidbits here and there, but not any lengthy discussion of the Union. Ross testified he had heard rumors to the effect that Respondent had found out everyone who had signed cards during the last union campaign. Ross also testified that it was possible he had told employee Stewart about the rumor although he could not recall a particular time, but he would say if Stewart had said he did, then he could not deny it. Ross did recall making a statement to Stewart and Jones in which he asked them what they were going to do with all the time that they were going to have on their hands. Ross stated he made the comment to Jones

and Stewart as a result of discussing with them what would happen if a union was voted in and the possibility of a strike or something like that happening. Ross denied telling Stewart to turn his shirt with "AFL-CIO" on it inside out. I credit the testimony of Jones and Stewart; and where in conflict with the testimony of Ross, I specifically discredit Ross. I credit Stewart's testimony notwithstanding the fact that Stewart's pre-trial affidavits to the National Labor Relations Board and to the State of Arkansas failed to make mention of the sweatshirt incident. Stewart impressed me as a reliable and truthful witness.

I conclude and find that Ross' comments to employees that Respondent President Reagan found out everyone who signed cards during the last election constituted interference and coercion in violation of Section 8(a)(1) of the Act. See *Piezo Technology, Inc.*, 253 NLRB 900 (1980). It is also quite clear, and I find, that Ross' questions to employees about what they were going to do with all the free time on their hands and reminding them of what had occurred during the last campaign constituted a threat of job loss or layoff. I also conclude and find that Ross' comments to Stewart with respect to his sweatshirt constituted coercion and intimidation in violation of Section 8(a)(1) of the Act.

D. *The Alleged 8(a)(3) Violations*

1. The alleged unlawful shift change and subsequent discharge of employee John Stephens

The General Counsel at paragraphs 10(a) and (c) of the consolidated complaint alleged that Respondent on or about April 2, 1980, transferred its employee John Stephens from first shift to second shift, and on or about April 23, 1980, discharged Stephens and has since failed and refused and continues to fail and refuse to reinstated him in violation of Section 8(a)(3) and (1) of the Act.

John Stephens commenced work for Respondent in May 1978 in the deburring department. Stephens became a leadman in the hydro department from February 1979 until January 1980 at which time he voluntarily relinquished his leadman's position and became a hand former in the hydro department on the day shift. Stephens testified he took a 25-cent-an-hour reduction in pay when he went, at his own request, from leadman to hand former.

Stephens testified he contacted Dewey Stiles of the United Steelworkers of America in March 1980 in order to start a union campaign at Respondent. Stephens commenced obtaining union signature cards on March 17, 1980, and over the next 5 days obtained approximately 40 signed authorization cards. Stephens testified he called employees at their home to solicit their support for the Union. Stephens also attempted to solicit employees to sign cards at the Nevada Street plant (Stephens worked at the Central Street plant) between March 16 to 21, 1980. As is set forth elsewhere in this Decision, Stephens went to the Nevada Street plant on March 21, 1980, where he met Respondent President Reagan. Reagan asked Stephens what he was doing and he informed Reagan he was there to pass out literature and obtain signature cards for the Union. It was at this point that Reagan announced Respondent's rule not allowing employees of the two plants to fraternize with each other during breaks, lunch hour, or between shifts.

Stephens testified he attended a meeting at which Respondent President Reagan and Vice President Furnas spoke in April 1980. At the speech Reagan spoke regarding the pros and cons of the Union. Stephens testified he attempted to disrupt the flow of Reagan's speech by injecting comments in favor of the Union. Stephens testified Reagan told him that if he wanted to work at a union plant, why didn't he quit and go to work at one. Stephens responded to Reagan by stating: "I know you'd really like me to do that."[4]

Stephens testified that on April 2, 1980, he was called into Respondent President Reagan's office and told he was being transferred from the first (day) shift to the second (night) shift. According to Stephens, Reagan told him the Respondent had numerous letters and phone calls from different companies stating they needed parts and as a result he needed someone to beef up the night shift. Reagan told Stephens he was the only employee available who could pull it off. Stephens told Reagan he did not want to go to the night shift, that they had already been through this once before when his wife worked night shifts, and it did not work out well for him or his wife. Reagan told Stephens he did not care, that he wanted him to go on the night shift. He could either go on night shift or quit.

Employee Stephens started work on the second shift on April 3, 1980. Stephens testified that on either April 3 or 4, 1980, Reagan came to his work station on the night shift. Stephens told Reagan he smelled like a brewery. According to Stephens, Reagan acknowledged that he did drink and then made the comment that if Stephens was doing a good job he would bring him 10 more employees. Stephens told Reagan that would be fine and would mean 10 more for the Union.

Respondent President Reagan testified that he did in fact visit employee Stephens one evening on the shift and that Stephens asked him when he would get more people. Reagan stated he told Stephens, "I wished I had 10 more," but nothing else was said. I credit Stephens' version of the conversation.

Stephens testified that he was given two employees to train on the night shift. According to Stephens, the two were already assigned to the night shift and were just brought over from another department to the department in which he would train them in hand forming. Stephens estimated it would take 3 to 4 months to train an employee in hand forming.

Stephens worked in hand forming on the night shift until on or about April 23, 1980. Stephens reported to work as usual on April 23, and a fellow employee, Chris Harvey, met him and told him he better cool it about the rumors, that there had been three people who had signed slips, that the slips were in the office and he had better cool it. It appears that Stephens did not seek any further

[4] Respondent President Reagan denied telling Stephens that if he wanted to work at a union plant, why didn't he quit and go work at one. Reagan did acknowledge making such a comment to other employees on a different occasion. I conclude Stephens was telling the truth in this respect and as such I discredit Reagan's denial.

details of fellow employee Harvey, but instead proceeded to Vice President Furnas' office. Stephens testified that when he arrived at Furnas' office, Respondent President Reagan was standing in the doorway of the office. Stephens walked past Reagan and asked Furnas what the hell was going on about the rumor he was supposed to have started saying Stephens had started a rumor about Furnas and a female employee, Pat Trumble, having an affair. According to Stephens, Vice President Furnas asked what rumor. Stephens testified Furnas was oblivious as to what he was talking about. Reagan's and Furnas' testimony regarding the facts of the meeting between Stephens and Furnas is essentially the same as Stephens.

Stephens testified that shortly after the first break period on that same shift, Vice President Furnas and President Reagan walked out of Furnas' office to where Stephens was and fired him. Stephens asked why he was being terminated and Furnas told him he had harassed employees and was insubordinate. Stephens asked Furnas who he had harassed and Furnas told him he did not need to know, to pack his tools, and go. According to Stephens, he packed his tools, called his wife, and left Respondent's plant.

Although Vice President Furnas did not tell employee Stephens what the alleged harassment was, Stephens subsequently learned it involved employees Jackie Wittington, Tommy Sharkey, and Pat Trumble. The three employees were presented as witnesses by Respondent.

Wittington testified she had a conversation with employee Stephens regarding the Union on April 21, 1980, at Respondent's Central Street plant location near the timeclock. Wittington stated she was wearing a vote no button and Stephens asked her why she was wearing the button inasmuch as she was not an eligible voter. Wittington informed Stephens it was a free country and she could wear whatever she wanted to. Wittington testified that Stephens said some of the posters Respondent had on the bulletin board were "a bunch of shit." According to Wittington, Stephens then asked her what she was going to do when the Union got in. She told Stephens it did not have a snowball's chance in hell of getting in. Wittington testified that Stephens responded, "Don't kid yourself, sweet thing. It will." Wittington told Stephens she would come to work as she had always done. According to Wittington, the conversation ended.

That same day Wittington reported her conversation with Stephens to her supervisor, Harriet Perrin, and the following day she told Respondent President Reagan about the conversation with Stephens. Wittington testified she feared Stephens because of his appearance and things she had heard.

Stephens stated he spoke with Wittington one evening in April 1980 prior to clocking in for work at which time Wittington asked him, "You don't really believe they're going to let a union in here?" Stephens told her he hoped they did. Stephens acknowledged he may have told Wittington the material on Respondent's bulletin board was a bunch of shit.

Employee Tommy Sharkey testified Stephens spoke with him about the Union on three occasions beginning around the end of March 1980. Sharkey testified that on the first occasion Stephens asked him what he thought about joining the Union. Sharkey told Stephens he had thought about it, but wanted to know exactly what it was the Union was proposing. According to Sharkey, Stephens stated he did not have all the answers Sharkey wanted, but that he would attempt to find out from those who knew and get back to him. Stephens asked Sharkey if he would go ahead and sign a union card anyway. Sharkey told Stephens he would not sign until he had gotten answers to his questions. Stephens allegedly responded, "Well, anyone that doesn't join the Union is an ass hole." Sharkey gave Stephens a dirty look and walked away.

Later that same day, Sharkey stated Stephens followed him to his machine and told him he still did not have answers to the questions Sharkey wanted information on and then told Sharkey, "You're a prick if you don't join the Union." Sharkey testified he told Stephens that was the best part of a man and went back to work.

Sharkey testified he had one additional conversation with Stephens at a later time about the Union. Sharkey was walking past the plant where Stephens was when Stephens asked him again about joining the Union. Sharkey was wearing a vote no button at the time. Sharkey testified Stephens told him, "You're an ass hole." Sharkey said he never spoke to Stephens after that. According to Sharkey, he did not mind the first two times Stephens talked to him, but the third time he was upset because Stephens talked to him about the Union when he was off from work.

Sharkey reported the three incidents to Respondent President Reagan the day following the third incident. Sharkey testified the first conversation with Stephens took place on either Wednesday or Thursday, the second one on the following Tuesday and the third one about 3 weeks later. Sharkey testified with respect to the occasion Stephens called him a prick: "I gave him back, I kind of satisfied my mind at that time, I thought it was kind of funny in a way."

Stephens denied calling Sharkey either a prick or an ass hole. Sharkey impressed me as a witness whose testimony was worthy of credit. Further, based on the various comments Stephens acknowledged making, such as his comment to employee Wittington, and Stephens' strong enthusiastic support for the Union, I conclude that it is more probable than not that Stephens did call Sharkey a prick and an ass hole.

Pat Trumble testified she had a conversation with Stephens on April 22, 1980. Trumble stated Stephens came to where she worked at the tool cage and asked her if she had any love affairs lately. Trumble told Stephens it was none of his business. Stephens told Trumble he wanted to be sure she voted and informed her no one would know how she voted. According to Trumble, Stephens told her not to let them push her into voting no. Trumble told Stephens she was going to vote the way she wanted to. According to Trumble, Stephens smiled, looked at her and said, "Goddamn, Pam, what are you doing? Screwing the whole front office?" Trumble told Stephens it was none of his business. Stephens then left Trumble.

Trumble testified she went to Respondent President Reagan's office where he and Respondent Attorney McDonald were present and, according to Trumble, they inquired of her why she was crying. She told them she would talk about it later.

Stephens denied ever approaching Trumble in the tool cage or accusing her of screwing everyone in the front office. Stephens testified there had been a rumor at the plant that Pat Trumble was having an affair with Vice President Furnas. Stephens testified he did not know the source of the rumor. Employee Brock Williams testified that the second day after he commenced work at Respondent he heard a rumor in the plant that Trumble and Furnas were having an affair. Williams stated he did not learn the rumor from Stephens. Stephens testified the rumor regarding Furnas and Trumble was common knowledge. Stephens stated he had in fact discussed the rumor with Trumble when she was an employee working for him when he was a leadperson. Stephens testified when he told Trumble about the rumor it appeared to him as though Trumble had already heard it. Stephens told Trumble he did not believe the rumor.

I credit Trumble's testimony regarding the comment she attributes to Stephens with respect to the front office.

It is necessary to consider together the three incidents of alleged harassment and the alleged insubordination attributed to Stephens in order to make a disposition of this matter. With respect to the incident between Wittington and Stephens even in crediting Wittington's version as accurate, which I do, I do not find it to constitute harassment in the context of Stephens' protected activity. Wittington seemed to handle herself rather well in the conversation. Stephens' language and comments to Wittington were no more offensive than those she made to him. I do not consider it harassment that Wittington may have feared or disliked Stephens based on his personal appearance.

The language of the exchanges between Sharkey and Stephens may have dropped to gutter level, however, I am persuaded it would not constitute harassment of a nature such as to justify Respondent's discharge of Stephens in light of his protected activity.

While Stephens' question to employee Trumble may not have been appropriate, I nevertheless am constrained to conclude it would not constitute harassment inasmuch as it was common knowledge there was a rumor circulating in the plant involving Furnas and Trumble. There is no conclusive evidence in this record to indicate Stephens started the rumor.

Stephens was alleged to have been insubordinate in his meeting with Furnas. The entire conversation between Stephens and Furnas lasted little more than a minute and does not impress me as warranting discharge when considered in the light of the union activity of Stephens and the anti-union animus of Respondent directed at Stephens.

It is undisputed that Stephens was an excellent employee. He had worked for Respondent 2 years without a warning or reprimand. Stephens' fortunes with Respondent plummeted rapidly after Stephens commenced a campaign on behalf of the Union on March 17, 1980. Just over 2 weeks later Stephens was transferred from the day to the night shift over his objections and with Respondent's knowledge that it created a family hardship for Stephens. Stephens' transfer came 2 weeks after a confrontation Stephens had with Respondent President Reagan which resulted in Reagan's announced prohibition against fraternizing between the two plants of Respondent. The decision to transfer Stephens from the day to the night shift was made by Respondent President Reagan without consultation with the plant manager. Reagan's stated reason for the transfer was a need for additional hand forming on the second shift to alleviate a backlog. However, when Stephens was terminated on April 23, 1980, he was not replaced. Shortly after his departure one of the two employees he had trained voluntarily quit the second shift and was not replaced. It is quite clear Respondent desired to rid itself of this union adherent lawfully or otherwise inasmuch as Respondent President Reagan told Stephens if he did not like working at Respondent and wanted to work for a union shop, why didn't he get out and do just that. Stephens did not accommodate Respondent; thus, on April 23 Respondent terminated him. Stephens was given no warnings of his alleged offenses whereas the evidence indicates other employees were, nor was he told the nature of the misconduct he had allegedly engaged in. No opportunity was afforded Stephens to explain to Respondent his version of any of the alleged instances of harassment. Based upon all of the factors surrounding the discharge of Stephens, particularly considering the timing of Respondent's actions and the union animus of Respondent in general and that specifically directed at Stephens, I conclude and find the motivating factor in Respondent's decision to transfer Stephens from the day to the night shift and later to discharge him was based on his having engaged in protected activities. Respondent's defenses did not demonstrate the same action involving Stephens would have taken place in the absence of his protected conduct. I therefore find Respondent violated Section 8(a)(3) and (1) of the Act when it transferred from day to night shift and subsequently discharged its employee John Stephens. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

2. The alleged unlawful discharge of employee John Clark Stewart

General Counsel at paragraph 10(d) of the consolidated complaint alleged Respondent on or about April 24, 1980, discharged and thereafter failed and refused to reinstate its employee John Clark Stewart.

John Clark Stewart commenced work for Respondent at its Nevada Street plant in December 1979 and worked until April 24, 1980. For approximately 2-1/2 months Stewart was assigned as an assistant mill operator under the guidance of employee Kenneth Jones. Jones was the mill operator of the large mill at Respondent. Both Stewart and Jones were supervised by Wade Ross. Stewart described his duties as an assistant mill operator as follows: "I'd load and unload parts; I would go and get the next job ready; get the parts ready to bring over to the mill. I would help Mr. Jones figure etch rates for the

mill."[5] Stewart testified he had never operated the mill without the assistance of employee Jones. Stewart had assisted Jones in working on single to eight chemical cuts.[6] Stewart stated that to his knowledge there was no set period of time to learn the functions of chemical milling.

As is set forth elsewhere in this Decision, Stewart signed a union card on April 10, 1980. He wore a sweatshirt or union button indicating his union sympathies. Stewart had also been told by Leadperson Ross to turn the sweatshirt inside out. Additionally, on the night Stewart was discharged he along with others were told by Respondent President Reagan that if they wanted to work in a union shop, they should quit, and get the hell out right then.

On the night of April 24, 1980, Stewart and Jones attended the speech given to the night shift by President Reagan. Following Reagan's speech, Jones and Stewart returned to their work area. According to Stewart, Leadperson Ross showed up about 20 minutes later and stood in the doorway looking at him and Jones for an hour and that Ross chewed Jones out because of some patched holes on parts they were running in the chem mill. At the evening dinner break, Jones quit. (Jones' quitting will be discussed *infra*.)

Stewart remained at his work station during the evening dinner break because Jones had quit. Stewart testified he miked the etchings on some eight cut parts during the dinner break. At the end of the dinner break Stewart stated that Ross came to him and told him the parts were worth $1,000 a piece that they were running and asked was he ready to run them. Stewart told Ross he was not, to which Ross replied, "John, I feel like you had enough experience to run them, but if it was up to me, I wouldn't start a man on these parts." Shortly thereafter, Leadperson Ross told Stewart that small chemical milling operator Johnson would be coming over and would work the parts.

Stewart testified that after Johnson was brought over to the large mill he was told to unload the eight cut parts and in place of them to run three cut parts. After Stewart observed the running of the three part cuts by Johnson, Johnson asked Stewart if he could run them completely on his own just under Johnson's supervision. According to Stewart, Johnson allowed him to do so.

At this point, Stewart went to Leadperson Ross' office and told him, "Mr. Ross, I can do the job back there. You can send Mr. Johnson back to the small mill if you'd like." According to Stewart, Ross replied, "That's fine. I thought you could do it. I'm expecting a call from Mr. Sorrell any minute." According to Stewart, Ross further told him he did not know if Stewart would be put in charge of the large or small mill, that he, Ross, really did not know what was happening, but he would get back to him.

Shortly thereafter, Ross approached Stewart and told him he had been told to terminate him. Stewart told Ross he was sorry, he felt he could have made a good mill operator, and hoped there would be no hard feelings between himself and Ross. Ross assured Stewart there would be no hard feelings as far as he was concerned. Stewart stated he then asked Ross if he could use him as a reference for further employment. According to Stewart, Ross told him he could use him as a reference at any time, but not to have the person seeking him as a reference call him at the plant because "you know how things are here. Don't have them call me down here." Stewart turned in his tools and left.

Leadperson Ross testified there were no eight cut parts run on April 24, 1980. Ross also stated Jones had quit before he had completed the load he was running. According to Ross, the parts being run at the time Jones quit were four cut parts. Ross testified he spent approximately an hour and a half around the chemical milling tank the entire night of April 24, and he made no effort to watch any employees any closer that night than he ever had. Ross testified he told Stewart he would not want to start a new chemical milling operator on the type work being done, but he told Stewart he felt he could run the part. Ross denied that Stewart ever at any time after he was terminated asked whether he could use Ross as a reference for future employment.

Ross testified that after he was told by Stewart that he could not run the chem mill, he attempted to contact Nevada Street Plant Manager Sorrell to find out what to do, but was unable to contact him. Ross contacted Nevada Street Assistant Plant Manager O'Brien and the two of them determined to shut down the small mill for the remainder of the night and bring that operator over to operate the large mill. According to Ross, Sorrell later called him at the plant and told him he would be back to him in a few minutes regarding what to do with the situation involving the large chem mill. Sorrell called Ross back and told him to terminate Stewart. Ross testified that between the first and second time that he talked to Sorrell, Stewart had come into his office and told him he felt he could operate the chem mill. Ross testified Stewart had a long enough time to learn to operate the chem mill and inasmuch as he had not, a determination was made to terminate him. Ross told Sorrell Stewart had informed him he could run the mill before Sorrell instructed him to terminate Stewart.

Although there are certain minor inconsistencies between Stewart's hearing testimony and that contained in affidavits given to the Arkansas Employment Security Division and the Board, I nonetheless believe Stewart's hearing testimony to be accurate and correct and where in conflict with Leadperson Ross' testimony, I discredit Leadperson Ross.

Respondent contends the discharge of Stewart was for cause inasmuch as he had refused to perform work when

[5] Etch rate was defined by Stewart as the number of mills per minute removed from an aircraft part while in a caustic solution.

[6] A "cut" on a piece of metal was made by running the metal through a chemical milling process to remove metal from certain areas of the part which resulted in a reduction of weight of the part. The number of cuts for a part was determined by the use to be made of the part. The amount to be removed from a particular area of a part may differ from that to be removed from other areas of the same part. Thus, a taping process was utilized so that a portion of the cut would be made with the first dip into the caustic solution and so forth which could result in a one cut, one dip to an eight cut, eight dip transaction. The evidence indicated the more cuts there were per part being placed in the caustic solution created the greater chance of having the part out of tolerance at the end of all of the cuts.

called upon to do so. Respondent further contends the only fair construction that could be given to the situation would be to conclude Stewart was competent to perform the operating of the chem mill on the night in question regardless of the number of cuts required on the part and that his refusal to do so for whatever reason clearly justified his discharge. Respondent contends it does not rectify the matter that Stewart reconsidered and informed Respondent he could perform the job before he was actually terminated.

Counsel for the General Counsel contends Stewart never really refused to operate the mill, that he was only concerned with the number of cuts on the particular parts he was being asked to run. Further, counsel for the General Counsel contends Stewart was an excellent employee who had been given a pay raise 1 month before his discharge and had never received a warning or reprimand. Counsel for the General Counsel contends Stewart was a hard working, dedicated employee whose only offense was to be an outspoken proponent of the Union and that his outspokenness for the Union caused his discharge.

It is unrefuted that Stewart was the only employee to wear a union sweatshirt or button on the second shift. It is also clear that Respondent acting through Leadperson Ross discussed the Union with Stewart and fellow employee Jones in an unlawful manner. Immediately before but on the same night that Stewart was discharged, Respondent President Reagan told Stewart and other employees if they wanted a union shop, why didn't they quit and get the hell out.

The timing of Stewart's discharge and the comments of Respondent herein are clear indications of an unlawful motive on the part of Respondent with respect to its actions against Stewart. A further indication of an unlawful motive on the part of Respondent is evidenced by the fact it was notified prior to discharging Stewart that he felt he was able to do the milling job. It appears Stewart was an excellent employee. Ross had recommended that Stewart be given an incentive pay increase just prior to his discharge. The status of the record in this case would indicate the chem mill operator would need a helper regardless of who was chosen as the actual operator, and it is without question that Stewart was trained and capable as a chem mill helper or assistant if not the actual chem mill operator. I therefore conclude and find counsel for the General Counsel has established a *prima facie* case demonstrating that a motivating factor in Respondent's decision herein was the protected conduct of Stewart. Further, I am persuaded and find Respondent did not demonstrate the same action involving Stewart would have been taken even in the absence of protected conduct. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). I therefore conclude and find that Respondent violated Section 8(a)(3) and (1) of the Act when it discharged its employee John Clark Stewart on April 24, 1980.[7]

[7] The instant case is clearly distinguishable from *Jupiter 8 Inc.*, 242 NLRB 1093 (1979), cited in Respondent's brief. In *Jupiter* the employee discharged therein was "definitely insubordinate," and told his supervisor to fire him if he did not like his attitude. In the instant case employee Stewart attempted to assist in accomplishing the work task assigned in any way commensurate with his capabilities and even before being discharged he had indicated his willingness to attempt operating the mill regardless of the number of cuts on any particular part or parts to be run.

3. The alleged unlawful failure to recall employee Kenneth Jones

The General Counsel at paragraph 10(e) of the consolidated complaint alleged that Respondent on or about May 6, 1980, failed and refused to rehire its employee Kenneth Jones.

Kenneth Jones commenced work for Respondent in June 1976 and worked until he quit on April 24, 1980. Jones commenced work in the rework area of Respondent, however, for approximately 2-1/2 to 3 years prior to his quitting he had worked as the operator in charge of the chem mill on the second shift. Jones worked under the immediate supervision of Leadperson Ross. Jones testified he trained from 4 to 6 months to be a chem mill operator before he was placed in charge of the chem mill. At the time Jones quit his employment with Respondent, his assigned helper was John Stewart. (Stewart's discharge has just been discussed *supra*.)

As indicated elsewhere in this Decision and consequently will not be discussed at length here, on the night that Jones quit his employment Respondent President Reagan had indicated to him that he was the only individual left from an earlier union campaign, and then stated, "If there was any union pushers harassing anyone that to come and tell him, that he would take care of it." It was during this same speech that Respondent President Reagan told employees if they did not like Chem Fab or were not satisfied with Chem Fab and wanted a union shop, to get the hell out.

Although employee Jones' actual quitting of his job is not before me, I shall briefly discuss what I find to be the credited facts surrounding his quitting. Jones testified he decided to quit because he felt like he had enough pressure and he could see that fellow employees were not supporting the Union as they had at first. Jones testified he considered his days at Respondent were numbered. Jones said Leadperson Ross was watching him more closely on the night he quit so he just determined he would quit.

Approximately 2 weeks after the April 24, 1980, date on which Jones quit, he called Nevada Street Plant Manager Sorrell at home to find out if Respondent was "going to fight his unemployment compensation claim." According to Jones, he told Sorrell in the telephone conversation that Leadperson Ross had been harassing him and that Jones thought he had done what Respondent wanted him to in quitting. Jones testified, "I asked whether I could return to work." According to Jones, Sorrell responded, "You know Ron's [Reagan] got a saying he would hire a man twice, but he would not hire him the third time." Jones asked Sorrell what he meant by that and Sorrell did not tell him. Jones stated he did not recall anything else about the conversation except that the Union had been discussed. Jones could not recall who brought up the subject matter of the Union. Jones could only recall Sorrell had indicated he was surprised Jones had involved himself in the union activities.

Jones testified he was laid off from Respondent in 1977, that he was off work for 5 months and returned to work as a result of charges being filed with the Board regarding his 1977 layoff. Jones testified that during his employment he had received pay increases and at the time he commenced work as the chem mill operator he was given a $1-an-hour pay increase.

Jones testified that he had a very definite opinion as to how chemical milling operations should be performed and from time to time he disagreed with Leadperson Ross and Nevada Street Plant Manager Sorrell about how the job should be performed. Jones testified he knew more about milling than either Ross or Sorrell and that he naturally preferred to work unsupervised. In fact, Jones testified it was possible he had told Ross at one time the way Ross wanted to run parts in the chem mill would be stupid.

Nevada Street Plant Manager Sorrell testified he knew Jones was for the Union before Jones left his job at the plant. According to Sorrell, Jones stated with respect to obtaining his job back, "Do you think it might be possible later on that I might could get back on?" According to Sorrell, Jones raised the question, "I have been told that the Company does not hire anyone three times." Sorrell testified he told Jones that was true, to which Jones replied, "Well, that doesn't apply to me because this is not my third time." Sorrell told Jones that was true.

Jones denied Sorrell said to him that the two time rule did not apply in his situation. Sorrell acknowledged his pre-trial affidavit given to the Board stated he told Jones Respondent had a guideline that they did not hire a man a third time, but that it did not apply to him. Jones' testimony was logical and he impressed me as a truthful witness. Therefore, where his testimony is in conflict with that of Sorrell, I credit Jones' testimony.

The evidence is quite clear that Jones quit in the middle of a shift on a sensitive job involving the chemical milling of aircraft parts. He gave no advanced warning to Respondent of his decision to quit, but rather simply turned in his tool belt and left. This action of Jones created a disruption of Respondent's work force in that several of the other employees' jobs such as taping of parts centered around the chemical milling operator performing his function. Further, it is quite clear Jones did not appreciate or care for supervision and had little if any respect for the opinion of supervisory personnel with respect to the operating of the chemical mill. Further, it is also clear that when Jones placed his call to Sorrell after having quit his job, it was for a purpose other than seeking to return to work at Respondent. Jones never made formal application to return to work at Respondent. The General Counsel in my opinion failed to establish that protected conduct was even a motivating factor in Respondent's decision not to rehire Kenneth Jones. I therefore recommend that portion of the complaint alleging an unlawful failure to rehire employee Kenneth Jones be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Wade Ross is a supervisor and agent of Respondent within the meaning of Section 2(11) and (13) of the Act.

4. Respondent has violated Section 8(a)(1) of the Act by promulgating, maintaining, and selectively and disparately applying a no-solicitation and no-talking rule in order to discourage employees from engaging in union activities; by threatening its employees with loss of benefits; by telling its employees Respondent would start from scratch a minimum proposal if it had to bargain with the Union; by soliciting employees to report employees who were active on behalf of the Union; by threatening employees with loss of jobs; by creating the impression of surveillance of its employees; by telling its employees Respondent had found out everyone who signed union authorization cards; by soliciting its employees to obtain their authorization cards back; and by threatening its employees with layoff.

5. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by transferring and subsequently discharging its employee John Stephens.

6. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by discharging and thereafter failing and refusing to reinstate its employee John Clark Stewart.

7. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by issuing warnings to its employees Chris Harvey, Pete Paisley, and James Smith for talking about the Union.

8. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. The General Counsel has not established by a preponderance of the evidence that Respondent has violated the Act as alleged in the consolidated complaint except to the extent found above.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act to include the usual posting of appropriate notices to employees. I shall recommend that Respondent offer John Stephens reinstatement to his former day- shift job or, if that job no longer exists, to a substantially equivalent position of employment without prejudice to his seniority or other rights and benefits previously enjoyed, and make him whole for any wages lost in accordance with the formula set forth *infra* as a result of the discrimination against him.[8] I shall recommend Respondent offer John Clark Stewart reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position of employment without prejudice to his seniority

[8] I am unpersuaded by Respondent's argument that Stephens has forfeited his right to reinstatement based on allegations and inferences that Stephens allegedly may have been arrested for offenses related to marijuana. I find there is no proof on this record to warrant denying Stephens his right to reinstatement.

or other rights and benefits previously enjoyed, and make him whole for any wages he may have lost as a result of the discrimination against him in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided for in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). I shall recommend that Respondent cancel and withdraw from the personnel files of employees Chris Harvey, Pete Paisley, and Jim Smith the disciplinary warnings given them pursuant to Respondent's no-talking rule.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[9]

The Respondent, Chem Fab Corporation, Hot Springs, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating, maintaining, and selectively and disparately enforcing its no-solicitation and no-talking rules in order to discourage employees from engaging in union activities.

(b) Threatening its employees with loss of benefits by telling its employees that it would start from scratch a minimum proposal if it had to go to the bargaining table with the Union.

(c) Soliciting employees to report employees who were active on behalf of the Union.

(d) Threatening employees with loss of jobs or layoff.

(e) Creating the impression of surveillance of its employees by telling its employees that it found out everyone who had signed union authorization cards.

(f) Soliciting employees to get their authorization cards back from the Union.

(g) Discharging employees or otherwise discriminating against them in any manner with respect to their tenure of employment or any other term or condition of employment because they engaged in activity on behalf of the United Steelworkers of America, AFL-CIO, CLC, or any other labor organization.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist a labor organization, or to refrain from any or all such activities.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer John Stephens and John Clark Stewart reinstatement to their former or substantially equivalent positions of employment without prejudice to seniority or other rights and privileges previously enjoyed, and make them whole in the manner set forth in "The Remedy" section for any loss of pay or any benefits they may have suffered by reason of the discrimination against them.

(b) Expunge from the personnel files of employees Chris Harvey, Pete Paisley, and James Smith all references to disciplinary action which resulted from their failure to comply with the no-talking rule.

(c) Preserve and upon request make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all of the records necessary to analyze the amount of backpay due and to assist in determining compliance with the recommended recision of all disciplinary action.

(d) Post at its Hot Springs, Arkansas, plants copies of the attached notice marked "Appendix."[10] Copies of the notice to be furnished to Respondent by the Regional Director for Region 26 and duly signed by a representative of Respondent shall be posted by Respondent immediately upon receipt thereof and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not specifically found.

[9] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."